

**A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8
OF THE KAUAI COUNTY CODE 1987, AS AMENDED,
RELATING TO THE COMPREHENSIVE ZONING ORDINANCE**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. The advent of Transient Vacation Rentals (TVR) and Bed and Breakfast (B&B) in Residential Districts has led to concerns relating to the reduction in the long-term rental inventory and loss of communities/neighborhoods as well as other issues.

One of the high priority implementation items in the recently approved General Plan involves the development of standards for TVR and B&B operations. The General Plan recognizes these types of alternate visitor accommodations, however it also acknowledges the need to develop regulations and standards to ensure that these uses are properly regulated and do not create any adverse impacts.

SECTION 2. Chapter 8, Article 8, of the Kauai County Code, 1987, as amended, is hereby amended to read as follows:

Sec. 8-1.5 Definitions.

(X) "Bed-and-Breakfast" means a use of a portion of a single-family detached dwelling unit (no Additional Dwelling Units and/or multi-family units) used for transient rental (less than 30 days) on a property where the owner or operator resides in the principal residence; the accommodations are in exchange for compensations; and the time of occupancy of the guest(s) is thirty (30) days or less.

(142) "Transient Vacation Rentals" means rentals in a **single-family detached dwelling, guest house, and/or a** multi-unit building for visitors over the course of one (1) or more years, with the duration of occupancy less than thirty (30) days for the transient occupant.

ARTICLE 3. RESIDENTIAL DISTRICTS (R)

Sec. 8-3.1 Purpose.

- (a) To establish standards governing the development, construction and use of housing and dwelling facilities.
- (b) To provide opportunity for all groups of persons to obtain adequate housing within each area of the County suitable for residential use in relation to other land uses and consistent with the preservation of natural, scenic, and historic resources.
- (c) To establish the level of minimum services necessary to assure the adequacy of housing.
- (d) To encourage a variety of housing types, sizes and densities necessary to meet the needs of all economic groups and to avoid environmental monotony detrimental to the quality of life. (Ord. No. 164, August 17, 1972; Sec. 8- 3.1, R.C.O. 1976)

Sec. 8-3.3 Generally Permitted Residential Uses And Structures.

- (a) The following types of residential uses and structures are permitted in districts R-1, R-2, R-4, and R-6 so long as the dwelling unit limitations established in Sec. 8-3.2 are not exceeded:
 - (1) Single family detached dwellings;
 - (2) Accessory structures and uses, including one (1) guest house on a lot or parcel 9,000 square feet or larger;
 - (3) Two (2) multiple family dwelling units or two (2) single family attached dwelling units upon a parcel of record as of June 30, 1980; and

- (4) Notwithstanding subsection (3) above, multiple family and single family attached dwellings developed pursuant to a Federal, State or County housing program.
- (b) Multiple family and single family attached dwellings are permitted in districts R-10 and R-20 in addition to those types of residential uses and structures permitted under Subsection (a) above.
- (c) Public and private parks and home businesses are permitted in all districts.
- (d) Adult Family Boarding and Family Care Homes that comply with all State Department of Social Services and Housing and State Department of Health rules, regulations and requirements provided, however, that the Planning Director may require a use permit for such applications that may create adverse impacts to the health, safety, morals, convenience and welfare of the neighborhood or community that the proposed use is located. (Ord. No. 164, August 17, 1972; Sec. 8-3.3, R.C.O. 1976; Ord. No. 388, June 30, 1980; Ord. No. 430, August 17, 1982; Ord. No. 466, September 13, 1984; Ord. No. 551, March 8, 1989)

(XX) Transient Vacation Rentals in the designated Visitor Destination Areas established in Ordinance No. 436.

Sec. 8-3.4 Uses And Structures In Residential Districts That Require A Use Permit.

The following uses and structures in residential districts require a use permit:

(X) Bed and Breakfast operations

- (1) Botanical and zoological gardens.
- (2) Cemeteries, mortuaries and crematoriums.
- (3) Churches, temples, and monasteries.
- (4) Clubs, lodges and community centers.
- (5) Diversified and specialized agriculture and nurseries.
- (6) Dormitories, guest and boarding houses; but not hotels and motels.
- (7) Golf courses.
- (8) Medical and nursing facilities.
- (9) Museums, libraries and public services and facilities.
- (10) Private and public utilities and facilities, other than maintenance and storage of equipment, materials, and vehicles.
- (11) Project developments in accordance with Article 18 of this Chapter.
- (12) Retail shops and stores.
- (13) School and day-care centers.

(XX) Transient Vacation Rentals in a non-VDA area

- (14) Transportation terminals and docks.
- (15) Three (3) or more multiple family dwelling units upon a parcel of record as of June 30, 1980, in the R-1, R-2, R-4, or the R-6 District.
- (16) Three (3) or more single family attached dwelling units upon a parcel of record as of June 30, 1980, in the R-1, R-2, R-4 or the R-6 District.
- (17) Residential care homes.
- (18) Adult Family Group Living Home.
- (19) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District. (Ord. No. 164, August 17, 1972; Sec. 8-3.4, R.C.O. 1976; Ord. No. 388, June 30, 1980; Ord. No. 466, September 13, 1984)

ARTICLE 4. RESORT DISTRICTS (RR)

Sec. 8-4.1 Purpose.

- (a) To create and protect attractive areas in pleasing and harmonious surroundings to accommodate the needs and desires primarily of visitors, tourists and transient guests.
- (b) To control density and to assure that undue congestion of streets and facilities will not occur.
- (c) To control the organization and design of use and structures to assure that the development will not detract from the natural features and attributes of the surrounding area.

- (d) To insure that physical and visual public access to recreational, historic and scenic areas is maintained and improved. (Ord. No. 164, August 17, 1972; Sec. 8-4.1, R.C.O. 1976)

Sec. 8-4.3 Generally Permitted Resort Uses And Structures.

The following types of uses and structures are permitted in RR-10 and RR-20 Districts, so long as the dwelling unit limitations established in Sec. 8-4.2 are not exceeded and provided that each use or structure is incidental to or accessory to resort development:

- (1) Accessory structures and uses
- (2) Apartment hotels
- (3) Automobile service and storage
- (4) Barber shop and beauty shop

(X) Bed and Breakfast operations

- (5) Commercial recreation
- (6) Gift shops
- (7) Golf courses
- (8) Home business
- (9) Hotels
- (10) Laundromat
- (11) Libraries
- (12) Motels
- (13) Museums
- (14) Police and fire stations
- (15) Public parks and monuments
- (16) Restaurants and food service
- (17) Retail cleaning outlets
- (18) Retail clothing shops
- (19) Retail food and drug shops
- (20) Shoe repair shops
- (21) Single family detached dwellings

(Ord. No. 164, August 17, 1972; Sec. 8-4.3, R.C.O. 1976; Ord. No. 388, June 30, 1980)

(XX) Transient Vacation Rentals

Sec. 8-4.5 Development Standards.

- (a) Residential. Subject to the density and acreage limitations in the particular Resort District as provided in Sec. 8-4.2, the standards for the development of single family detached residential structures shall be the same as those provided in Sec. 8-3.1.
- (b) Hotels. Buildings containing hotel rooms shall be considered the same as multiple family dwellings subject to the same standards as provided in Secs. 8-3.5 through 8-3.8, inclusive, with the following exceptions:
 - (1) there is no maximum distance requirement from buildings containing dwelling units to parking areas;
 - (2) only one (1) parking space must be provided for each three (3) hotel rooms;
 - (3) the maximum allowable land coverage shall be fifty percent (50%);No hotel room in a structure containing more than three (3) rooms shall be converted to a dwelling unit without first obtaining a Class IV Zoning Permit.
- (c) Motels. Development standards for motels shall be the same as those for multiple family dwellings as provided in Secs. 8-3.5 through 8-3.8, inclusive, with the following exceptions:
 - (1) parking spaces must be within one hundred fifty (150) feet of the dwelling unit or motel room served;
 - (2) at least one (1) parking space shall be provided for each motel room.
- (x) Bed and Breakfast Operations. Development standards shall be the same as those for single-family detached dwellings as provided in Secs. 8-3.5 through 8-3.8, inclusive, with the following exceptions:**
 - (1) building of use shall be a single-family detached dwelling unit.**
 - (2) operation shall be owner or operator occupied.**
 - (3) operation shall consist of no more than two (2) bedrooms.**

- (4) each operation shall be limited to only one meal (breakfast) that is provided to the guests by the operator.
 - (5) one off-street parking stall per guest bedroom.
 - (6) only one sign no larger than three (3) square feet shall be permitted.
 - (7) no direct illumination of the sign.
 - (8) sign shall include the permit number for the operation.
 - (9) operation shall not be allowed on properties that have existing Additional Dwelling Units (ADU).
 - (10) permits issued shall be valid for two years, but would be renewable provided there is no evidence that the B&B has not complied with the general limitations pertaining to B&Bs, or with any specific conditions of approval that may have been included with the permit approval.
 - (11) a renewal fee of \$ _____, deposited into the Environmental Impact Assessment fee fund for each two year interval.
 - (12) the operator shall provide the Planning Department with a 24 hour contact information thirty (30) days after the permit is granted.
 - (13) renewal requests for permits shall be accompanied by proof of a valid TAT license and GET license.
 - (14) any advertisement for an approved B&B (internet, newspaper, magazine, brochure, other media) shall include the approved permit number for the operation.
 - (xx) Transient Vacation Rentals. Development standards shall be the same as those for single-family detached dwellings as provided in Secs. 8-3.5 through 8-3.8, inclusive, with the following exceptions:
 - (1) only one sign no larger than three (3) square feet shall be permitted.
 - (2) no direct illumination of the sign.
 - (3) sign shall include the permit number for the operation.
- (d) Other Permitted Uses. Parking service, open space and other requirements applicable to each use other than dwelling units shall be the same as the regulations established in the district other than Resort where such uses are permitted and regulated.
- (e) Other Requirements. Other requirements for development standards in resort districts are as follows:
- (1) The Planning Director or the Planning Commission may revise the requirements if the plan review required for a zoning permit indicates that the specific nature of the overall development reasonably warrants the revisions.
 - (2) The Planning Commission may require the dedication of adequate public access ways not less than six (6) feet in width to publicly-owned land or waters and may require the preservation of all historic and archaeologic sites, known or discovered on the parcel subject to development. (Ord. No. 164, August 17, 1972; Sec. 8-4.5, R.C.O. 1976; Ord. No. 363, April 5, 1979; Ord. No. 388, June 30, 1980; Ord. No. 396, August 11, 1980)

Sec. 8-4.6 Permits Required.

Chapter shall be undertaken within any Resort District except in accordance with a valid zoning permit. The following zoning permits, in accordance with Article 19, shall be required for the following activities:

- (1) Class I Permit. A Class I Permit must be obtained for construction or development on a parcel where:
 - (A) the parcel is not located in a Constraint District or a Special Treatment District, and is not large enough to qualify for more than one (1) dwelling unit under the density permitted in the Resort District in which the parcel is located; and
 - (B) the construction or development does not require a use permit or a variance permit.
- (2) Class II Permit. A Class II Permit must be obtained for construction or development on a parcel where:
 - (A) the parcel is not located in a Constraint District or a Special Treatment District, and is large enough to qualify for two (2) to ten (10) dwelling units under the density permitted in the Resort District in which the parcel is located; and

- (B) the construction or development does not require a use permit or a variance permit.
- (3) Class III Permit. A Class III Permit must be obtained for construction or development on a parcel for which a variance permit is not required, where:
- (A) the parcel is large enough to qualify for eleven (11) to twenty-five (25) dwelling units under the density permitted in the Resort District in which the parcel is located, whether or not the parcel is located in a Constraint District or Special Treatment District; or
- (B) the construction or development consists of one (1) single family detached dwelling in which case a Class II Permit may be obtained unless the parcel is located in a Constraint District or a Special Treatment District; or
- (C) the construction or development is such that a Class I or Class II Permit would otherwise be obtainable except that the parcel is located in a Constraint District or a Special Treatment District.
- (4) Class IV Permit. A Class IV Permit must be obtained for construction or development on a parcel that is:
- (A) large enough to qualify for more than twenty-five (25) dwelling units whether or not the parcel is located in a Constraint District or Special Treatment District, and whether or not a use permit or variance permit is required; or
- (B) for which a Class I, II, or III Permit would otherwise be obtainable except that a variance permit is required.
- (5) To obtain any permit the applicant shall show compliance with the Standards established in this Section and shall submit a plot plan and other information as required by Sec. 8-3.8(d). (Ord. No. 164, August 17, 1972; Sec. 8-4.6, R.C.O. 1976)

Sec. 8-4.7 Non-Conforming Use Certificate for Bed and Breakfast Operations.

B&B facilities that existed prior to (date of ordinance adoption) shall apply for a Non-Conforming Use Certificate (NUC). The following shall apply to the filing of a NUC:

- (a) **The existing B&B shall have been established at least within six (6) months prior to (date) .**
- (b) **The owner-operator shall establish proof of operation to qualify for a NUC.**
- (c) **Failure to apply for a NUC by (date) shall nullify the ability to obtain a NUC.**
- (d) **No more than 2 guest rooms shall be used to rent to B&B guests.**
- (e) **One off-street parking stall per guest room.**
- (f) **Any advertisement of an approved B&B NUC (internet, newspaper, magazine, brochure, other media) shall include the NUC number for the B&B.**
- (g) **NUCs shall be renewable every two years, with a fee, provided that the B&B has operated within the limits of approvals, and can demonstrate continuous operations throughout the previous year. Continuous operations shall be defined as having guests that stayed a minimum of 90 nights at the B&B operation during the previous year.**
- (h) **Proof of a valid TAT and GET license shall be required at the time of NUC application.**
- (i) **A site and floor plan shall be filed with the NUC application.**

ARTICLE 5. COMMERCIAL DISTRICTS (C)

Sec. 8-5.1 Purpose.

- (a) To designate areas suitable for commercial and public or private business activities distributed so as to supply goods and services to the public in a convenient and efficient manner.
- (b) To relate commercial and business activities to established or projected transport, utility and community patterns so that they may contribute to the general health, safety and welfare of the public.
- (c) To assure that commercial and business development and uses will not detract from the environmental qualities of the surrounding areas. (Ord. No. 164, August 17,

1972; Sec. 8-5.1, R.C.O. 1976)

Sec. 8-5.3 Generally Permitted Uses And Structures.

(a) Neighborhood Commercial. The following uses and structures are permitted in neighborhood commercial districts:

- (1) Accessory uses and structures
- (2) Automobile services
- (X) Bed and Breakfast operations in the designated Visitor Destination Areas established in Ordinance No. 436.**
- (3) Churches, temples and monasteries
- (4) Clubs, lodges and community centers
- (5) Household services
- (6) Museums, libraries and public services
- (7) Personal services, such as barber shops, laundromats, and shoe repair shops
- (8) Professional offices
- (9) Public parks and monuments
- (10) Retail shops and stores
- (11) Restaurants and food services
- (12) Single family detached dwellings on lots or parcels of no less than six thousand (6,000) square feet, and to a density not to exceed six (6) units per acre.
- (X) Transient Vacation Rentals in the designated Visitor Destination Areas established in Ordinance No. 436.**

(b) General Commercial. The following types of uses and structures are permitted in general commercial districts:

- (1) Accessory uses and structures
- (2) Automobile sales, repair and storage
- (3) Automobile services
- (X) Bed and Breakfast operations in the designated Visitor Destination Areas established in Ordinance No. 436.**
- (4) Churches, temples and monasteries
- (5) Clubs, lodges and community centers
- (6) Commercial indoor amusement and parks
- (7) Department stores
- (8) Hotels and motels
- (9) Household services
- (10) Light manufacturing, such as handicrafts and garment fabrication
- (11) Minor food processing, such as cracked seeds, jellies, candies and ice cream
- (12) Museums, libraries and public services
- (13) Offices and professional buildings
- (14) Parking garages
- (15) Personal services
- (16) Public offices and buildings
- (17) Public parks and monuments
- (18) Research and development
- (19) Restaurants and food services
- (20) Retail sales
- (21) Supermarkets and shopping centers
- (X) Transient Vacation Rentals in the designated Visitor Destination Areas established in Ordinance No. 436.**
- (22) Transportation terminals and docks
- (23) Warehouses
- (24) Wholesale outlets

(Ord. No. 164, August 17, 1972; Sec. 8-5.3, R.C.O. 1976)

Sec. 8-5.4 Uses And Structures In Commercial Districts That Require A Use Permit.

(a) Neighborhood Commercial. The following uses and structures in neighborhood commercial districts require a use permit:

- (1) Animal hospitals
- (2) Automobile sales, repair and storage
- (X) Bed and Breakfast operations in non-VDAs**
- (3) Botanic and zoologic gardens
- (4) Communications facilities
- (5) Construction materials storage
- (6) Diversified agriculture
- (7) Food processing and packaging
- (8) Light manufacturing
- (9) Multiple family dwellings and single family attached dwellings
- (10) Private and public utilities and facilities
- (11) Project development in accordance with Article 18 of this Chapter
- (12) Research and development
- (13) Schools and day care centers
- (X) Transient Vacation Rentals in non-VDAs**
- (14) Warehouses
- (15) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the District.

(b) General Commercial. The following uses and structures in general commercial districts require a use permit:

- (1) Animal hospitals
- (2) Bars
- (X) Bed and Breakfast operations in non-VDAs**
- (3) Botanic and zoologic gardens
- (4) Commercial outdoor amusement
- (5) Communications facilities
- (6) Construction materials storage
- (7) Diversified agriculture
- (8) Food processing and packaging
- (9) Nightclubs and cabarets
- (10) Private and public utilities and facilities
- (11) Project development in accordance with Article 18 of this Chapter.
- (12) Residential dwellings, detached, attached or multi-family
- (13) Schools and day care centers
- (X) Transient Vacation Rentals in non-VDAs**
- (14) Warehouses
- (15) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the Planning Director. (Ord. No. 164, August 17, 1972; Sec. 8-5.4, R.C.O. 1976)

ARTICLE 17. TIME SHARING AND TRANSIENT VACATION RENTALS

Sec. 8-17.1 Limitations On Location.

Except as provided in this section, time share units, time share plans and transient vacation rentals are prohibited. (Ord. No. 436, September 22, 1982)

Sec. 8-17.2 Permitted Locations.

Subject to the limitations contained in Sections 8-17.3 and 8-17.4, time share units, time share plans and transient vacation rentals are allowed:

- (a) In Hotels in Resort or Commercial Districts; and
- (b) In Resort Districts and Residential Districts when such districts are located within the visitor destination areas of Poipu, Lihue, Wailua-Kapaa or Princeville, as more particularly designated on County of Kauai Visitor Destination Area maps attached to Ordinance No. 436 and incorporated herein by reference. The boundary lines established on these visitor destination maps shall be transferred onto the official zoning maps for reference purposes. (Ord. No. 436, September 22, 1982)

Sec. 8-17.3 Time Sharing In Projects Located Within Visitor Destination Areas And Hotels In Resort Or Commercial Districts.

If the project in which the time share unit or time share plan is to be created contains an existing time share unit or time share plan, then time share units and plans shall be regulated according to the terms of the project instruments.

If the project in which the time share unit or time share plan is to be created is not a hotel and does not contain time share units or time share plans, then such use may be created only if such use is explicitly and prominently authorized by the project instruments, or the project instruments are amended by unanimous vote of the unit owners to explicitly and prominently authorize time sharing. Provided, however, that time share units and time share plans permitted under this section shall be limited to the visitor destination areas described in Section 8-17.2, and to hotels in Resort or Commercial Districts. (Ord. No. 436, September 22, 1982)

Sec. 8-17.4 Existing Uses.

(a) Existing Time Share Units, Time Share Plans and Transient Vacation Rentals in Projects Not Located in Visitor Destination Areas. Nothing in this Article shall impair the use in a project of an existing time share unit, an existing time share plan, or an existing transient vacation rental **constructed prior to (six (6) months prior to the effective date of Ordinance No.)**, when such project is not located within the visitor destination areas described in Section 8-17.2. All such existing time share units, time share plans and transient vacation rentals in such a project shall be regulated according to the terms, if any, of the project instruments. However, no additional time share units, time share plans, or transient vacation rentals shall be created in such a project after the effective date of this section, nor shall the terms of the project instrument be amended or modified after the effective date of this section in any manner that will allow an increase in the number of time share units, time share plans, or transient vacation rentals within the project. The uses left unimpaired by this subsection shall not be lost by the failure to exercise the use unless it clearly appears that the use has been abandoned for a period in excess of two years. This subsection shall not apply to hotels in Resort or Commercial Districts. **Transient Vacation Rentals that are in existence that are in accordance with this Section shall be subject to the following:**

- 1) **The existing TVR shall have been established at least within six (6) months prior to (date) .**
- 2) **The owner-operator shall establish proof of operation to qualify for a NUC. Proof of non-conformity may include records of occupancy or tax documents, such as GET records, TAT records, and federal and/or tax returns.**
- 3) **Failure to apply for a NUC by (date) shall nullify the ability to obtain a NUC.**
- 4) **Only one dwelling unit on a lot of record can be included in any TVR.**
- 5) **Notice shall be provided to occupants concerning house rules, neighborhood rules, code of conduct related to excess noise, lights, parking, garbage pick-up, recycling.**
- 6) **A 24 hour contact person shall be identified for each TVR.**
- 7) **Any advertisement of an approved B&B NUC (internet, newspaper, magazine, brochure, other media) shall include the NUC number for the B&B.**
- 8) **NUCs shall be renewable every two years, with a fee, provided that the B&B has operated within the limits of approvals, and can demonstrate continuous operations throughout the previous year. Continuous operations shall be defined as having guests that stayed a minimum of 90 nights at the B&B operation during the previous year.**
- 9) **A site and floor plan shall be filed with the NUC application, and no interior lock-outs shall be permitted.**

(b) Existing Time Share Units, Time Share Plans And Transient Vacation Rentals in Projects Located Within Visitor Destination Areas. Time share units and time share plans in existing projects located within the visitor destination areas described in Section 8-17.2 shall be regulated in accordance with the provisions of Section 8- 17.3. (Ord. No. 436, September 22, 1982)

Sec. 8-17.5 Penalty.

An owner of any unit which is operated in violation of this Article, together with any other person, firm, company, association, partnership or corporation violating any provision of this Article, shall each be fined not less than \$500 nor more than \$10,000 for each offense. If any person fails to remove such violation within one month, such person shall be subject to a new and separate violation for each day the violation continues to exist.

(a) Actions by County Attorney. The County Attorney may file a civil action to enjoin any violation of this Article and collect any penalties provided for by this Article.

(b) Disposition of Fines. All fines imposed for violations of this Article shall be paid to the Director of Finance to the credit of the Development Fund. (Ord. No. 436, September 22, 1982)

Sec. 8-17.6 Amendments To Visitor Destination Areas

Designations.

Amendments to the location and/or boundaries of the Visitor Destination Areas shall be made in accordance with the amendment provisions of Article 22 of this Chapter 8, provided that the burden of proof rests with the applicant to show upon the clear preponderance of the evidence that the amendment is reasonable. The criteria for evaluating such proposed amendments shall be as follows:

- (1) The proposed amendment is consistent with the General Plan and the Development Plan.
- (2) The parcel or parcels to be affected by the proposed amendment are suitable for Visitor Destination Area uses.
- (3) The availability of existing public services and facilities in the affected areas and whether the requested public services and facilities for the proposed change in use can be met without undue burden.
- (4) The proposed change will conflict with other existing uses in the affected area.
- (5) The proposed change will cause or result in unreasonable air, noise, or water pollution, or will adversely affect irreplaceable natural resources.
- (6) The affected areas contain or are in close proximity to other areas that contain:
 - (A) Large numbers of hotel and/or multiple family dwelling units suitable as accommodations by temporary visitors.
 - (B) Lands designated for Resort Use on the General Plan or having Resort zoning.
 - (C) Outdoor or commercial recreational facilities, such as beaches, golf courses, tennis courts and other similar facilities.
 - (D) Tourist related commercial facilities, such as gift shops, food stores, recreational equipment and services shops, tour and transportation service terminals, restaurants, bars, night clubs, cabarets, shopping centers, theaters, auditoriums, and other similar facilities.
- (7) The proposed change will include or adversely affect predominantly residential neighborhoods. (Ord. No. 436, September 22, 1982)